

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**STEPHEN P. CURTIS,  
LIBERTARIAN PARTY OF NEW MEXICO,  
CHRIS LUCHINI,  
and  
RANOTA Q. BANKS,**

**Plaintiffs,**

**1:20-CV-00748-JB-JHR**

**v.**

**MAGGIE TOULOUSE OLIVER,  
in her official capacity as Secretary of State of New Mexico.**

**SANDOVAL COUNTY CLERK EILEEN GARBAGNI'S  
MOTION TO QUASH A PORTION OF SUBPOENA TO APPEAR  
AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION**

Sandoval County Clerk, Eileen Garbagni ("Garbagni"), by and through the Sandoval County Attorney's Office, (Robin S. Hammer and David C. Mann), hereby requests that this court quash, in part, the subpoena dated August 7, 2020 commanding appearance to testify at a hearing scheduled for August 17, 2020 at 9:30 a.m. and to produce certain documents on or before August 14, 2020 at 5:00 p.m.

On August 10, 2020 Garbagni received a Subpoena to Appear and Testify at a Hearing or Trial in a Civil Matter. The Subpoena requested the following documents:

- 1) All Libertarian ballots cast in the 2020 primary election in Sandoval County;
- 2) tally sheets for Stephen Curtis in the 2020 primary election in Sandoval County;
- 3) canvass or election results for the 2020 primary election for Sandoval County for Stephen Curtis.

See Exhibit "A".

Clerk Garbagni is hereby requesting that the portion of the subpoena requesting “All Libertarian ballots cast in the 2020 the primary election in Sandoval County” be quashed on the grounds that the ballots are confidential and are in a locked ballot box that under New Mexico law cannot be opened without a court order.

**I.**

**AUTHORITY TO QUASH A SUBPOENA**

Federal Rule of Civil Procedure (“FRCP”) 45(d)(3)(A)(iii) requires the court to quash or modify a subpoena that requires the disclosure of “privileged or other protected matter, if no exception of waiver applies.” For the reasons set forth below, Garbagni maintains that the ballots requested are protected from disclosure and therefore the portion of the subpoena requesting the ballots should be quashed.

**II.**

**BALLOTS ARE PROTECTED FROM DISCLOSURE  
UNDER NEW MEXICO ELECTION LAW**

New Mexico Election Law provides:

After all certificates have been executed, the election board shall place the bundles of tabulated paper ballots in the ballot box and the ballot box shall be closed and locked.

Section 1-12-67 (NMSA 1978)

As to the handling of ballot boxes once they are locked New Mexico Election Law further provides:

Once the ballot box has been locked by the prescient board after it first count and tally, no person shall open the ballot box or remove its contents except by court order or as otherwise provided by the Election Code.

Section 1-13-14 (NMSA 1978).

Under New Mexico law, the unauthorized opening of a ballot box is a criminal act.

Unlawful opening of a voting machine consists of, without lawful authority, opening, unlocking, inspecting, or removing the contents thereof without lawful authority, or conspiracy with others to have the same done.

Whoever commits unlawful opening of a ballot box is guilty of a fourth degree felony.

Section 1-20-4 (NMSA 1978).

Garbagni, or any employees of the Sandoval County Clerk's office, are prohibited by New Mexico law from opening or removing any item from a locked ballot box. The ballots requested in the subpoena are "protected matter" and therefore under FRCP 45(d)(3)(A)(iii), the Court must quash the subpoena as to "All Libertarian ballots cast in the 2020 primary election in Sandoval County."

Garbagni will comply with the remaining portions of the subpoena.

### **III.**

### **CONCLUSION**

Based on the foregoing, Sandoval County Clerk, Eileen Garbagni respectfully requests that this court enter an order quashing the portion of the subpoena issued on August 7, 2020 as to the request for ""All Libertarian ballots cast in the 2020 primary election in Sandoval County."

Respectfully submitted,

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*Attorneys for Sandoval County Clerk  
Eileen Garbagni*

**CERTIFICATE OF SERVICE**

I certify that on August 13, 2020, I served the foregoing on counsel of record for all parties via the CM/ECF system.

/s/ David C. Mann  
David C. Mann